U.S. Department of Labor

Benefits Review Board
P.O. Box 37601
Washington, DC 20013-7601

BRB No. 15-0055

WARREN MANGUM	)	
	)	
Claimant-Respondent	)	
	)	
v.	)	
	)	
C P & O, LLC	)	DATE ISSUED: Aug. 24, 2015
	)	
and	)	
	)	
PORTS INSURANCE COMPANY, INCORPORATED	)	
	)	
	)	
Employer/Carrier-Petitioners	)	DECISION and ORDER

Appeal of the Decision and Order Awarding Benefits of Dana Rosen, Administrative Law Judge, United States Department of Labor.

Gregory E. Camden (Montagna Klein Camden, LLP), Norfolk, Virginia, for claimant.

Christopher R. Hedrick (Mason, Mason, Walker & Hedrick, P.C.), Newport News, Virginia, for employer/carrier.

Before: BOGGS, GILLIGAN and ROLFE, Administrative Appeals Judges.

PER CURIAM:

Employer appeals the Decision and Order Awarding Benefits (2014-LHC-00161) of Administrative Law Judge Dana Rosen rendered on a claim filed pursuant to the provisions of the Longshore and Harbor Workers' Compensation Act, 33 U.S.C. §901 *et seq*. (the Act). We must affirm the findings of fact and conclusions of law of the administrative law judge which are rational, supported by substantial evidence, and in accordance with law. *O'Keeffe v. Smith, Hinchman & Grylls Associates, Inc.*, 380 U.S. 359 (1965); 33 U.S.C. §921(b)(3).

Claimant, while working as a general longshoreman for employer on June 27, 2013, allegedly experienced pain in his neck, left arm and left wrist while removing pins from shipping containers. Claimant immediately sought and received medical care following this incident, returned to work for employer, and remained employed until Dr. Wardell removed him from work on July 22, 2013. Claimant returned to work on December 9, 2013. Claimant sought temporary total disability compensation for the period of July 21 through December 8, 2013, as well as medical benefits.

In her Decision and Order, the administrative law judge applied Section 20(a), 33 U.S.C. §920(a), to presume that claimant's injuries are related to the work incident, and that employer did not rebut the Section 20(a) presumption. After addressing the remaining issues disputed by the parties, the administrative law judge awarded claimant temporary total disability compensation for the period of July 21 through December 8, 2013, and medical benefits for the treatment of his work-related conditions. 33 U.S.C. §§907, 908(b).

On appeal, employer argues only that the administrative law judge erred in determining that it failed to present evidence sufficient to rebut the Section 20(a) presumption. Claimant responds, urging affirmance of the administrative law judge's decision.

In her Decision and Order, the administrative law judge invoked the Section 20(a) presumption based on findings that claimant suffered harm to his neck, left arm and left wrist, and the presence of working conditions on July 27, 2013, specifically the pulling of container pins, which could have caused those conditions. *See U.S. Industries/Federal Sheet Metal, Inc. v. Director, OWCP*, 455 U.S. 608, 14 BRBS 631 (1982); *Universal Maritime Corp. v. Moore*, 126 F.3d 256, 31 BRBS 119(CRT) (4th Cir. 1997); *Bolden v. G.A.T.X. Terminals Corp.*, 30 BRBS 71 (1996); Decision and Order at 10-11. The burden then shifted to employer to rebut this presumed causal connection with substantial evidence that claimant's injuries were not caused or aggravated by this incident at work. *See Newport News Shipbuilding & Dry Dock Co. v. Holiday*, 591 F.3d 219, 43 BRBS 67(CRT) (4th Cir. 2009). If the administrative law judge finds that the Section 20(a) presumption is rebutted, it no longer controls, and the issue of causation must be resolved on the evidence of record as a whole, with claimant bearing the burden of persuasion. *See Moore*, 126 F.3d 256, 31 BRBS 119(CRT).

On appeal, employer asserts that the opinion of Dr. Manke constitutes substantial evidence sufficient to rebut the Section 20(a) presumption. We need not address this specific contention because, assuming, *arguendo*, that Dr. Manke's opinion is sufficient to rebut the Section 20(a) presumption, the administrative law judge's conclusion that claimant's injuries are related to the incident at work is supported by substantial evidence. Although the administrative law judge erroneously weighed all relevant

evidence in addressing whether employer rebutted the Section 20(a) presumption, this error is harmless in this case, as she rationally weighed the medical evidence and her conclusion is supported by substantial evidence. *See*, *e.g.*, *Hawaii Stevedores, Inc. v. Ogawa*, 608 F.3d 642, 44 BRBS 47(CRT) (9th Cir. 2010).

In this regard, the administrative law judge rejected the opinion of Dr. Manke because he examined claimant on only one occasion and did not review either claimant's EMG report or August 12, 2013 MRI. The administrative law judge credited the records from NowCare, as these providers treated claimant immediately following the occurrence of his work injury, and the opinion of Dr. Wardell, as he treated claimant on multiple occasions thereafter. *See* Decision and Order at 12-14. After the incident on June 27, 2013, claimant was diagnosed at NowCare with a left forearm strain and given physical restrictions. CX 2. Claimant continued to treat with the medical staff at NowCare until July 24, 2013. Dr. Wardell, whose treatment of claimant on numerous occasions between July 22, 2013 and February 6, 2014 included physical therapy, a steroid injection and medication, ordered an MRI, diagnosed claimant with cervical radiculopathy and forearm and wrist sprains, and opined that these conditions are directly related to claimant's June 27, 2013, work activities. CX 4 at 10. In contrast, Dr. Manke opined that claimant did not sustain a forearm or wrist strain, and that his cervical radiculopathy was not caused by his work activity. CX 5 at 8; EX 8 at 9-10.

The administrative law judge acted within her discretion in relying on the opinion of Dr. Wardell, as supported by the medical records of NowCare, in concluding that claimant's neck, arm and wrist conditions are causally related to the incident at work on June 27, 2013. Decision and Order at 12-14. It is well-established that an administrative law judge has considerable discretion in evaluating and weighing the evidence of record and is not bound to accept the opinion or theory of any particular medical examiner. *See Newport News Shipbuilding & Dry Dock Co. v. Cherry*, 326 F.3d 449, 37 BRBS 7(CRT) (4th Cir. 2003); *Todd Shipyards Corp. v. Donovan*, 300 F.2d 741 (5th Cir. 1962); *John W. McGrath Corp. v. Hughes*, 289 F.2d 403 (2d Cir. 1961). Thus, as the administrative law judge rationally accorded greater weight to the opinions of Dr. Wardell, claimant's treating physician, and the NowCare staff who treated claimant on multiple occasions following his work incident, we affirm the administrative law judge's conclusion that claimant's neck, forearm and wrist conditions are related to the work incident as it is supported by substantial evidence of record. *See generally Pittman Mechanical Contractors, Inc. v. Director, OWCP*, 35 F.3d 122, 28 BRBS 89(CRT) (4th Cir. 1994); *Newport News Shipbuilding & Dry Dock Co. v. Director, OWCP* [*Hess*], 681 F.2d 938, 14 BRBS 1004 (4th Cir. 1982). As no other issues are raised on appeal, we affirm the award of benefits.

Accordingly, the administrative law judge's Decision and Order Awarding Benefits is affirmed.

SO ORDERED.

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JUDITH S. BOGGS
Administrative Appeals Judge

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RYAN GILLIGAN
Administrative Appeals Judge

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JONATHAN ROLFE
Administrative Appeals Judge